

# **Planning Commission Staff Report**

File #: C-21-3  
Applicant: Borrego Solar Systems, Inc., authorized representative of Borrego, Alexander Deuson, P.E. and their agent, AES Consulting Engineers (contact, John Bennett, P.E.)  
Rezoning Request: A-2, Agricultural, General to SED, Utility Scale Solar Energy District  
Property Location: West side of Boydton Plank Road (Route 1) approximately 1.2 miles north of the Dinwiddie and Brunswick County line and approximately 0.64 miles north of the intersection of Boydton Plank Road (Route 1) and Cutbank Church Road (Route 713)  
Property Size: Approximately 52.50 +/- acres  
Tax Map Parcel: 80-40  
Magisterial District: Spony District  
Planning Commission Mtg.: August 11, 2021

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## **CASE AND PROJECT OVERVIEW**

The applicant, The applicant, Borrego Solar Systems, Inc., authorized representative of Borrego, Alexander Deuson, P.E. and their agent, AES Consulting Engineers (contact, John Bennett, P.E.) are requesting to rezone property containing approximately 52.50 +/- acres from A-2, Agricultural General, to SED, Utility Scale Solar Energy District. The SED, Utility Scale Solar Energy District, zoning classification allows for solar energy projects pursuant to the Zoning Ordinance allowed density. The property is generally located in the area on the west side of Boydton Plank Road (Route 1) approximately 1.2 miles north of the Dinwiddie and Brunswick County line and approximately 0.64 miles north of the intersection of Boydton Plank Road (Route 1) and Cutbank Church Road (Route 713). The property is further defined as Tax Map Parcel No. 80-40. As indicated in the Dinwiddie County Comprehensive Land Use Plan, the subject property is located within the Rural Conservation Area, which allows limited industrial, service, and utility uses for this general area.

Borrego Solar Systems, Inc., is proposing to design, construct and operate an 2.5-megawatt alternating current solar photovoltaic (PV) ground mounted electric generation project located on approximately 52.5 +/- acres. The applicant is seeking a rezoning approval from A-2, Agricultural, General, to Utility Scale Solar Energy District (SED), which allows for a utility scale solar energy projects upon receiving a conditional use permit.

The proposed project is a 2.5 mega-watt solar facility which will be composed of approximately 7,155 photo-voltaic (PV) single axis tracking solar panels. The facility will connect to the Dominion Energy power grid. The proposed solar facility will encompass approximately 13 acres. The site is located on the southern end of the county. The perimeter of the solar panels will be fenced and there is a proposed 14-foot gravel access road proposed connecting with Boydton Plank Road. The overall slopes on the site range from 3-20%. The majority of the site has been cleared with few wooded areas remaining.

All parcels surrounding the subject property are zoned A-2 within Dinwiddie County. Brunswick County borders the property to the west and the adjacent properties are zoned agricultural.

The project sponsor and applicant is Boydton Plank Solar 1, LLC c/o Borrego. Borrego proposes to lease land owned by Keith B. and Stephanie S. Freeman for the temporary installation of the facilities, targeting a lifespan of approximately 20 years with the option to extend the lease to 40 years. At the conclusion of the projects' lifecycle the facilities will be decommissioned, removed, and the land use, cover types, lines and grades, and character of the leased area restored to pre-project condition.

One major goal of this development is to minimize the visual impacts the solar panels may pose on the community. In order to minimize the visual impact, buffering is proposed. A landscape plan and color perspective rendering are provided with the application to represent the existing and proposed views from Boydton Plank Road adjacent to the site. The proposed plan will incorporate proposed buffer plantings as well as providing natural buffer areas, which will provide effective visual mitigation. There is no anticipated detriment to the adjacent properties or the county. Public utilities such as water and sewer will not be necessary for the development.

Upon operation of the proposed project there will be no personnel on-site aside from occasional maintenance. Landscape maintenance would be required several times a year. The site is generally self-sufficient and unless the components or any of the panels are malfunctioning, personnel will not be on-site. Hence, there will be virtually no traffic impact due to the development outside of the construction phase. Construction traffic will adhere to state and local regulations. It is expected that the plant (solar facility) will operate 24 hours a days and 7 days a week. Neither smoke, noise, or dust will be produced from the operation of the facility. There are no outside storage areas or hazardous materials associated with the development.

The point of interconnection with the existing electric power transmission system along Route 1 will be located at the southeastern portion of the site near the proposed entrance. The solar photovoltaic electricity generation system consists of the photovoltaic panels, racking systems supporting the panels, inverters, breakers, switches, cabling, power transformers, and generator tie-line and associated materials and equipment will be installed on portions of 13.0 +/- acres of the site (see Attachment, the Layout and Materials Plan).

## **ATTACHMENTS**

C-21-3 Application and Application Package

## **LAND USE AND ZONING ANALYSIS**

The area is generally rural and used for silviculture and agricultural purposes interspersed with rural residential lots. The site includes forested land and wetland/floodplain systems associated with the Nottoway River on the rear portion of the subject property. The properties in the immediate area surrounding the subject land parcels include agricultural and forested land, and low-density single-family residential land uses. The properties to the north, east, south and west are zoned A-2, Agricultural General.

The Site ultimately drains into the Nottoway River. The soils in the general area are Cecil sandy loam and Roanoke loam for the portion of the property located in the floodplain. The western end of the parcel is in Flood Zone A per the Federal Emergency Management Agency (FEMA). The project will sit on the east side of the parcel and is completely outside of the determined floodplain.

A primary purpose of the SED zoning district is to outline the process and requirements for the construction, installation, and operation of solar energy projects in Dinwiddie County in a manner that promotes economic development and ensures the protection of health, safety, and welfare while also avoiding adverse impacts to agricultural lands, endangered species habitats, conservation lands, and other sensitive lands.

## **OVERVIEW OF IMPACTS**

In the application request for rezoning and a conditional use permit, the applicant submitted a Waters of the U.S. Study, Phase 1 Environmental Site Assessment, Threatened and Endangered Species database review, Conceptual Landscape Plan and Viewshed Analysis, and a Traffic Summary. The proposed Project will be required to obtain additional permits from the U.S. Army Corps of Engineers (USACE). In addition, the construction will take place in accordance with the Virginia Department of Environmental Quality (VDEQ) and the Virginia Department of Transportation (VDOT).

### **Fiscal Impact**

In consultation with the Commissioner of the Revenue the tax liability for this project will be \$15,000 per acre with a one-time \$6,953 land use rollback. In accordance with Va. Code Section 15.2-2288.8 effective July 1, 2020, the applicant is offering a one-time voluntary payment to Dinwiddie County in relation to the proposed solar project. The applicant is making a voluntary one-time payment to the county in the amount of Forty Thousand Dollars (\$40,000.00), which has a future value of \$68,500 over the 20 years of the project, prior to issuance of a certificate of occupancy for the solar project. The one-time payment may be used by the County for any lawful purpose. The applicant is suggesting applying the payment to a new County park, maintenance of roads, or possibly an emergency services project. The project is exempt from all personal property tax and machinery and tools tax under Va. Code Sec. 58.1-3660 and HB 1297.

### **Cultural and Environmental Impacts**

The applicant commissioned the attached Cultural Resources Survey and the Comprehensive Natural Resources Studies Report. A “Waters of the U.S. Study” (WOUS) was performed by ECS Mid-Atlantic, LLC dated October 5, 2020. The study has been included in this application package for your reference. Streams on the property will not be impacted by the project. The wetlands are delineated on the Conditional Use Permit Site Plan, which has also been submitted for review. Wetland impact has been avoided and minimized. At this time, a small finger of wetland (approximately 0.21 acres) is proposed to be impacted. Appropriate wetland permitting from state and federal jurisdictions will be applied for during the site plan permitting phase.

A Preliminary Cultural Resources Assessment was performed dated July 31, 2020 by The James River Institute for Archaeology, Inc. The study concluded that no archaeological sites exist on the property.

The western end of the parcel is in Flood Zone A per the Federal Emergency Management Agency (FEMA). The development will sit on the east side of the parcel and is completely outside of the determined floodplain.

Additionally, a “Phase I Environmental Site Assessment” was performed ECS Mid-Atlantic, LLC dated August 24, 2020. The assessment concluded that there is no evidence of recognized conditions for the subject parcel, hence, no further action is necessary.

ECS Mid-Atlantic, LLC also performed a Threatened and Endangered (T&E) Species database review for the site dated September 29, 2020. The review included conducting a search of the Virginia Department of Wildlife Resources (VDWR), Fish and Wildlife Information Services (FWIS) threatened and endangered species within a two-mile radius of the site. There were several species listed in the review. However, the habitat for most of the species does not appear to be present on the site and the development doesn’t appear to pose adverse effects on any of the species. The review also included a U.S. Fish and Wildlife Services (USFWS) review which listed the Federally threatened northern long-eared bat. It is not anticipated that the development will pose adverse effects on the species. It will critical to adhere to the local erosion and sediment control regulations due to the species that may be on or near the site.

The Conceptual Landscape Plan and Viewshed Analysis indicate that the applicant plans to utilize the existing vegetation and trees to screen the northern, western and southern portions of the Project from view while planting new evergreen vegetation to screen the Project from the Route 1 viewshed.

The aforementioned studies are included with the application package. Development will be done in accordance with state and local regulations.

#### School System, Public Safety, & Public Utilities Impacts

There are no impacts to the school system with the proposed rezoning allowing for construction of the solar energy generating facility. The potential impact on public safety with the rezoning of the subject property include the proposed solar arrays, inverter and transformers, and electric substation and generators having to address fire protections as required by the applicable National and local Fire Code and Building Code. The impact on public utilities involves the point of interconnection with the existing transmission line.

#### Transportation Impacts

The site is located on Boydton Plank Road (Route 1). It is a three-lane (two lanes northbound), undivided, asphalt surfaced roadway without shoulders. Ditches are located along both sides of Blue Star highway and the posted speed limit is 55 miles per hour. The closest intersecting roads are Westover Drive, approximately 4,000 feet northeast of the subject property, and Little Deer Road, approximately 2,000 feet south of the subject property. There are several residential drives that also connect to Boydton Plank Road.

The Average Daily Traffic Volume for this section of Boydton Plank Road is 1600 vehicles per day as determined by the Virginia Department of Transportation (VDOT) and published in their 2019 Annual Average Traffic Volume Estimates by Section of Route for Dinwiddie County.

The solar facility is unmanned and there are few regular daily vehicle trips to the site anticipated, the traffic impacts of the proposed solar facility once it is up and running is nearly zero. There would only be less than ten trips generated per month anticipated for maintenance of the site. The frequency and number of additional vehicle trips daily and at the peak hour are so low that

the impact will be nearly imperceptible given the existing and anticipated traffic along this section of Boydton Plank Road.

There will be additional traffic anticipated, temporarily during construction, estimated to be 6 to 8 months, which will have a temporary impact on the daily traffic as well as the peak hour volumes. As such, the following items are anticipated immediately preceding and following the construction period: 1) 1000' feet in either direction from the access point, along Boydton Plank Road, on the site must be clearly marked as a Construction Zone using all appropriate signage in accordance with VDOT's construction zone guidelines; and 2) The roadway speed limit 1,000' feet in either direction from the access point on the site must be temporarily reduced to 40 mph (from the current 55 mph) for at least one month before the construction work begins, in order to help drivers acclimate to the reduced speed limit before the construction traffic begins to arrive at the site, until one month after the construction ends. The applicant will work closely with VDOT and County staff during the site planning and permitting stage to comply with necessary guidelines.

To ameliorate the impacts of the increased traffic on area roads VDOT is recommending that a Construction Traffic Management Plan (CTMP) be required to account for the transportation impacts related to the development of the property. The CTMP includes (1) a plan to show proposed construction access routes to the development site from the State primary routes; (2) a pre-construction assessment of the condition of the secondary roadways to be used as a haul route to the facility with a commitment from the applicant to repair any damage caused during construction and to restore the roadways to pre-construction conditions; and (3) a plan to identify on-site areas suitable for parking for the construction workers and areas exist on-site to allow trucks to be unloaded and to turn around without having to back onto State maintained roadways.

Additionally, VDOT anticipates that multiple low-volume commercial entrances are required to serve the proposed solar energy facility. The low volume commercial entrance has to demonstrate that stopping sight distance based on the posted speed limit is available at the proposed entrance location. All future transportation related improvements for the construction entrances and commercial entrances will have to meet VDOT design and construction requirements and standards and be permitted through VDOT.

### Proposed Project Conditions

Preliminary Conditions proposed by Planning Staff:

C-21-3 Conditions:

1. The use of the property shall be limited to an 2.5-megawatt alternating current (MW AC) ground-mounted solar photovoltaic electric generating facility (the "Project"). The project site (the "Project Site") shall consist of land identified as Dinwiddie County Tax Map Parcel 80-40 (the "Project Parcel") and consisting of approximately 52.5 acres of which will be rezoned to Utility Scale Solar Energy District (SED) and utilized for the Project. The Project will be developed in substantial conformity with the preliminary site plan dated January 7, 2021 and included with the CUP application (the "Layout and Materials Plan"). The Project Site shall include the areas shown on Layout and Materials and as may be shown on the final site plan (the "Final Site Plan") containing racking, panels, inverters, transformers, cabling, and supporting infrastructure (collectively, the "Solar Facilities") to include stormwater management areas. Onsite

battery energy storage devices shall not be allowed. Battery energy storage devices associated with inverters shall not be subject to this provision and shall be considered “supporting infrastructure”.

2. The Applicant (or “Owner” or “Operator”, which may be used interchangeably) shall develop the Project Site in substantial accord with the Conceptual Site Plan as determined by the Zoning Administrator. Significant deviations or additions, including any enclosed building structures not shown on the Layout and Materials Plan shall require review and approval by the Planning Commission.
3. Studies and Plans. Prior to or concurrent with the submission of the Site Plan, the Applicant will submit to the County the studies and plans as set forth in this Section 3.

(a) Construction Management Plan (the “Construction Management Plan”). Applicant will submit the Construction Management Plan, including the following items:

- i. Proposed construction schedule and hours of operation;
- ii. Project access planning for each entry to the Project and any required road improvements;
- iii. Project security measures to be implemented prior to the commencement of construction of the Solar Facilities;
- iv. Dust mitigation and any burning operations; and
- v. Handling of construction complaints via a project liaison (the “Project Liaison”).

(b) Construction Traffic Management Plan/Traffic Mitigation Plan (the “CTMP”) and Road Repair Plan (the “Road Repair Plan”). The Applicant shall:

- i. Develop the CTMP in consultation with the County Planning Staff, the Virginia Department of Transportation (“VDOT”), the Dinwiddie County Sheriff’s Office, and the Virginia State Police to identify and expeditiously resolve or mitigate traffic issues that arise during the construction or decommissioning of the Solar Facilities, including but not limited to (A) lane closures, (B) signage, and (C) flagging procedures. Employee and delivery traffic shall be scheduled and managed so as to minimize conflicts with local traffic. Permanent access roads and parking areas will be stabilized with gravel, asphalt or concrete to minimize dust and impacts to adjacent properties. Traffic control methods shall be coordinated with VDOT prior to initiation of construction. The CTMP will identify on-site areas suitable for parking for construction workers and for trucks to be unloaded and to turn around without having to back onto public roadways during construction and decommissioning.
- ii. Develop the Road Repair Plan in consultation with VDOT to provide for repair of damage to public roads occurring within five hundred (500) feet of any entrance to the Project attributable to construction or decommissioning of the Solar Facilities. The Road Repair Plan shall provide that such repair restore the roads to conditions at least comparable to their conditions before the commencement of construction or decommissioning.

(c) Landscaping Plan (the “Landscaping Plan”) The Applicant shall submit the Landscaping Plan showing the Solar Facilities and the Project, including the security fence, screened from public rights-of-way and adjacent residential properties with existing or proposed vegetation, including the vegetative buffer surrounding the Project. The vegetative buffer shall be located outside of any public utility easement, if any, running along the property line. The vegetative buffer provided in the Landscaping Plan shall conform to the following requirements:

- i. The vegetative buffer will consist of trees and/or shrubs which at planting shall be a minimum of six (6) feet in height;
- ii. Existing vegetation will be maintained where possible and supplemented, as necessary;

iii. The vegetative buffer will be regularly inspected and supplemented with additional plantings as necessary to replace dead trees and shrubs. To ensure this process is completed on a timely basis, Applicant will provide for an annual third-party inspection of the buffer which third-party will submit a report detailing the condition of the buffer and any needed replanting or supplementing due to thinning or vegetative attrition. A copy of this report will be provided to Applicant and County staff and Applicant will ensure the remedial measures are addressed.

Applicant shall also provide the following:

iv. The Applicant shall submit renderings along with the Site Plan describing the buffer areas, specifically delineating the areas where existing vegetation is to be maintained or supplemented and areas where the vegetative buffer will be established;

v. The Landscaping Plan for Boydton Plank Road (Route 1) shall include sufficient landscaping to screen the solar panels from view by the motoring public driving along Boydton Plank Road. The determination of satisfaction of this requirement shall be made by the Zoning Administrator as part of the approval of the Site Plan.

vi. Provisions for the establishment of the vegetative buffer in core areas either prior to or simultaneous with the commencement of construction of the Facility to ensure those new vegetative buffers are well-established prior to the completion of the Facility.

vii. A twenty thousand dollar (\$10,000.00) landscaping bond will be posted for ten (10) years to ensure maintenance of the vegetative buffer in accordance with the Landscaping Plan. The bond shall be in a form acceptable to the County Attorney and shall be in place at the time of final site plan approval. The bond shall be replenished by Applicant in the event it is drawn upon by the County on or before December 31 of any given year during the first ten (10) years of the Project, calculated from the date of commencement of operation of the Project.

(d) Building and Electrical Plans. The Applicant shall submit building and electrical plans to the Building Official for approval.

(e) Final Environmental and Historic Survey Studies. The Applicant shall prepare and submit to the appropriate agencies (as applicable) the following studies and reports, and provide copies to the County:

i. Wetland and Stream Delineation, including Preliminary Jurisdictional Determination from the Army Corps of Engineers;

ii. Threatened and endangered species habitat assessment; and

iii. Phase 1 archaeological and historical survey of the Project.

(f) Liability Insurance Certificate. The Applicant shall provide proof of adequate liability insurance for the Project.

(g) Grading Plan. The Project shall be constructed in compliance with the County approved grading plan (the "Grading Plan") as determined and approved by the Planning Director or its designee prior to the commencement of any construction activities and a bond or other security will be posted for the grading operations. The Grading Plan shall:

i. Clearly show existing and proposed contours;

ii. Note the locations and amount of topsoil to be removed (if any) and the percent of the site to be graded;

iii. Limit grading to the greatest extent practicable by avoiding steep slopes and laying out arrays parallel to landforms;

iv. Balance the earthwork on-site with no import or export of soil, with the exception of construction of any berms, if any, as otherwise provided herein;

- v. In areas proposed to be permanent access roads which will receive gravel or in any areas where more than a few inches of cut are required, provide that topsoil will first be stripped and stockpiled on-site to be used to increase the fertility of areas intended to be seeded; and
- vi. Take advantage of natural flow patterns in drainage design and keep the amount of impervious surface as low as possible to reduce storm water storage needs.

(h) Erosion and Sediment Control Plan. Unless the County chooses not to opt out of the Erosion and Sediment control program, thereby delegating that authority to DEQ, the County may undertake a third-party review of the Erosion and Sediment Control Plan with corrections completed prior to the County's review and approval of the Site Plan. The Owner or Operator shall construct, maintain and operate the Project in compliance with the approved plan, posting an Erosion and Sediment Control bond (or other security) for the construction portion of the project.

(i) Stormwater Management Plan. The County may require a third-party review with corrections completed prior to County review and approval. The Owner or Operator shall construct, maintain and operate the project in compliance with the approved plan. A storm water control bond (or other security) shall be posted for the project for both construction and post construction as applicable and determined by the Environmental Administrator. If the County chooses to opt out of Stormwater Management, DEQ will conduct all necessary Stormwater Management control review.

(j) Initial Groundwater Report. Prior to issuance of the building permit, the Applicant shall submit the initial groundwater monitoring report and confirm the schedule for updated reports as required by Section 22-234.67 of the Dinwiddie County SED District Regulations.

(k) Reimbursement for Third Party Reviews; Inspections. During the development of the Project, Applicant agrees to refund the County up to \$20,000 per year for any costs associated with the provision and/or employment of outside experts and consultants necessary to review specific technical issues related to the Project outside the County's expertise or for which the County has inadequate full-time staff. This provision shall commence upon submission of a Final Site Plan for approval by the Planning Director and continue through the date of commencement of commercial operation (the "Commercial Operation Date") for the Project, at which point this condition shall be deemed satisfied and the obligation will terminate. However, Applicant agrees to reimburse the County for up to the actual costs of employee time for inspection and other permit compliance duties, not to exceed 40 hours, in any calendar year during the life of the Project to off-set the costs to the County of inspections and other permit compliance duties. During this time, the County shall submit to Applicant invoices for such costs not less than quarterly and such invoices shall be paid within thirty (30) days of receipt.

4. Site Plan Features. The Final Site Plan will include and the Project will be developed in substantial conformity with the Layout and materials Plan dated January 7th, 2021 and included with the CUP application and will include:

- (a) an 85-foot setback maintained from the fence line of the Project to the edge of the right-of-way where the Site abuts the public rights-of-way along Boydton Plank Road;
- (b) a 75-foot wide setback for the remaining perimeter of the Project Site will maintained between the fenced solar arrays and the property lines of the adjoining properties.
- (d) A vegetative buffer of will surround the perimeter of the Project Site. Existing trees and vegetation will be retained where possible and additional vegetation added where necessary as provided in the Landscaping Plan;



- (e) no setbacks for the electrical collection/transmission lines right of ways; and
- (f) landscaping along Boydton Plank Road as otherwise provided herein and as depicted in the Landscaping Plan as part of the Final Site Plan.

5. **Limited Access to the Project.** The Project may have the access as shown on the Layout and Materials Plan.
6. **Lighting.** During construction of the Solar Facilities, any temporary construction lighting shall be positioned downward, inward, and shielded to minimize glare from all adjacent properties. Emergency and safety lighting shall be exempt from this construction lighting condition. Any onsite lighting provided for the operational phase of the Project shall be dark-sky compliant, shielded away from adjacent properties, and positioned downward to minimize light spillage onto adjacent properties.
7. **Access and Inspections.** The Applicant and property owners shall allow designated County representatives or employees access to the facility at any time for inspection purposes. Access and Inspection. The Applicant will allow designated County representatives or employees access to the facility at any time for inspection purposes, with advance notice to the Owner or Operator of the Project and subject to reasonable site safety and security requirements to ensure safe inspection by the County. The Project may be inspected by the County Building Official on an annual basis to ensure compliance with applicable State Building and Electrical Codes. The Project shall be required to have the Solar Facilities inspected annually for three (3) years by the Zoning Administrator or their designee following the commencement of commercial operation in order to verify continued compliance with the Conditional Use Permit and the Zoning Ordinance, as applicable. Additional inspections shall be conducted as necessary in the event of complaints and shall not replace the inspections specified in this section.
8. **Training.** The Applicant shall arrange a training session with the Dinwiddie County Public Safety Departments to familiarize personnel with issues unique to a solar facility before operations begin and shall repeat such training on an as-needed basis not to exceed once per year.
9. **Compliance.** The Solar Facility shall be designed, constructed, and tested to meet all relevant local, state, and federal standards as applicable.
10. **Groundwater Monitoring.** To establish the current groundwater quality and levels of specific element contaminates, groundwater monitoring shall take place prior to and upon completion of construction of the Project throughout the area of the Project. Ground water monitoring shall take place every five (5) years of the operation of the Project, and upon completion of decommissioning, with each report provided to the Zoning Administrator.
11. **Signage.** Warning signage shall be placed on the Solar Facilities to the extent required by any local, state or federal law or regulation. The Solar Facilities shall not be used for displaying any advertising except for reasonable identification of the Owner and Operator of the Project. All signs, flags, streamers or similar items, both temporary and permanent, are prohibited on the Solar Facilities except as follows: (a) manufacturer's or installer's identification; (b) appropriate warning signs and placards; (c) signs that may be required

by a governmental agency; and (d) signs that provide a 24-hour emergency contact phone number and warn of any danger.

12. Agricultural Use Value Program and Applicable Taxes and Fees. For any Project Parcel that has been part of the Agricultural Use Value program pursuant to Virginia Code Sections 58.1-3230 and 58.1-3231 during the past five years, all penalties and interest payments that are due to the County will be paid within ninety (90) days of issuance of the CUP.
13. Financial Contribution. In accordance with Va. Code Section 15.2-2288.8 effective July 1, 2020, the applicant is offering a one-time voluntary payment to Dinwiddie County in relation to the proposed solar project. The applicant is making a voluntary one-time payment to the county in the amount of Forty Thousand Dollars (\$40,000.00) prior to issuance of a certificate of occupancy for the solar project. The one-time payment may be used by the County for any lawful purpose.
14. Project Components and Design. The Solar Facilities shall comply with generally accepted national environmental protection and product safety standards for the use of solar panels and associated technologies for solar photovoltaic projects. The Project shall be constructed in compliance with the requirements of the most current Virginia Building and Electrical Codes in effect upon issuance of the building permit. The total height of the Solar Facilities shall not exceed 18 feet above the ground when orientated at maximum tilt. This height limitation shall not apply to the power poles, substation equipment and the connections to the existing transmission lines on the Property. Any electrical wiring used in the Project shall be underground (trenched) except:
  - (a) wiring directly connecting individual panels or arrays of panels,
  - (b) where necessary to avoid natural obstacles, wetlands or electrical interference, or
  - (c) where wiring is brought together for interconnection to system components, and/or the local utility power grid.
15. Decommissioning.
  - a. Decommissioning Plan. The Applicant shall submit a decommissioning plan (the “Decommissioning Plan”) to the County in the form of a written agreement for approval in conjunction with the building permit. The Decommissioning Plan shall be in the form of a written agreement acceptable to the County, shall comply with Virginia Code Section 15.2-2241.2 and the Zoning Ordinance, and shall set forth the joint and several responsibilities of the Applicant and all the successors and assigns of the Applicant (the “Responsible Party”). The purpose of the Decommissioning Plan is to specify the procedure by which the Responsible Party would remove the Solar Facility after the end of its useful life and restore the property for agricultural uses.
  - b. Decommissioning Cost Estimate. The Decommissioning Plan shall include a decommissioning cost estimate (the “Decommissioning Cost Estimate”) prepared by a Virginia licensed professional engineer.
    - i. The Decommissioning Cost Estimate shall provide the gross estimated cost to decommission the Solar Facilities in accordance with the Decommissioning Plan and these Conditional Use Permit Conditions. The decommissioning cost estimate may include any estimates or offsets for the resale or salvage values of the Solar Facilities equipment and materials.

- ii. The Responsible Parties shall reimburse the County for an independent review and analysis by a Virginia licensed professional engineer of the initial Decommissioning Cost Estimate.
    - iii. The Responsible Party shall update the Decommissioning Cost Estimate every five (5) years from the Commercial Operation Date and reimburse the County for an independent review and analysis by a Virginia licensed professional engineer of each Decommissioning Cost Estimate revision.
  - c. Security.
    - i. Prior to the County's approval of the building permit, the Applicant shall provide decommissioning security in the Decommissioning Cost Estimate. A financial security (the "Financial Security") shall be provided in accordance with Virginia Code Section 15.2-2241.2 and the Zoning Ordinance.
    - ii. Upon the receipt of the first revised Decommissioning Cost Estimate (following the 5th anniversary from The Commercial Operation Date, if there is any increase in the Decommissioning Cost Estimate, the Financial Security shall be increased by the Applicant, or its successors and assigns, within ninety (90) days and shall be similarly trued up for every subsequent five year updated Decommissioning Cost Estimate.
    - iii. The Financial Security must be received prior to the approval of the building permit and must stay in force for the duration of the life span of the Solar Facilities and until all decommissioning is completed. If the County receives notice or the County receives notice that the Financial Security may be revoked, the County may give a notice of violation in accordance with these Conditional Use Permit Conditions and if the violation is not cured, the County shall be entitled to take all action to obtain the rights to such financial security.
    - iv. Notwithstanding the foregoing requirements in subsections (i)-(iii) above, an alternative security arrangement may be accepted by the County so long as it is a form acceptable to the County Attorney.
  - d. Applicant Obligation. Within six (6) months after the cessation of use of the Solar Facilities for electrical power generation, the Applicant or its successors and assigns, at their sole cost and expense, shall commence decommissioning of the Solar Facilities in accordance with the Decommissioning Plan approved by the County. Following the completion of decommissioning of the entire Solar Facilities arising out of a default by the Applicant, or its successors and assigns, any remaining Financial Security held by the County shall be distributed to the Owner or Operator of the Solar Facility.
  - e. Applicant; Decommissioning by the County.
    - i. If the Applicant, or its successors or assigns, fail to timely decommission the Solar Facilities, the County shall have the right, but not the obligation, to commence decommissioning activities and shall have full access to the property and access to the full amount of the Financial Security.
    - ii. If applicable, any excess Financial Security shall be returned to the Owner or Operator, or their successors or assigns, after the County has completed the decommissioning activities.
    - iii. Prior to the issuance of any permits, the Applicant shall deliver a legal instrument to the County granting the County the right to access the property to complete the decommissioning upon the Applicant, Owner or Operator's default. Such instrument(s) shall bind the Applicant and their

successors, heirs, and assigns. Nothing herein shall limit other rights or remedies that may be available to the County to enforce the obligations of the Applicant, including under the County's zoning powers.

- f. Equipment/building removal. All physical improvements, materials, and equipment related to Solar Facilities, both surface and subsurface components, shall be removed in their entirety. The soil grade shall also be restored following disturbance caused in the removal process. Perimeter fencing shall be removed and recycled or re-used. The County in its sole discretion may grant an exception to removal of the materials and equipment upon written request from the current or future landowner indicating areas where removal is not desired.
- g. Infrastructure removal. All access roads shall be removed, including any geotextile material beneath the roads and granular material. The County in its sole discretion may grant an exception to removal of the access roads and associated culverts or their related material would be upon written request from the current or future landowner to leave all or a portion of these facilities in place for use by that landowner. Access roads shall be removed within areas that were previously used for agricultural purposes and topsoil shall be redistributed to provide substantially similar growing media as was present within the areas prior to site disturbance.
- h. Partial Decommissioning. If decommissioning is triggered for a portion of the Solar Facilities, then the Applicant or its successor or assigns shall commence and complete decommissioning, in accordance with the Decommissioning Plan, for the applicable portion of the Solar Facilities; the remaining portion of the Solar Facilities would continue to be subject to the Decommissioning Plan. In the event of a partial decommissioning, the financial security shall be reduced in direct proportion to the proportion of the Project being decommissioned. Any reference to decommissioning the Solar Facilities shall include the obligation to decommission all or a portion of the Solar Facilities whichever is applicable with respect to a particular situation.

#### 16. Permits, reports, etc.

- a. Regular Reports. Prior to the Commercial Operation Date of the Project, the Applicant shall submit a report annually to the County Administrator outlining the permitting and development plan progress for the Project. After the Commercial Operation Date, the Applicant shall submit an annual operational report to the County Administrator.
- b. All applicable federal, state, and local permits shall be obtained and filed with the Dinwiddie County Planning Department prior to the Commercial Operation Date. This Conditional Use Permit is effective only upon receipt by the Dinwiddie County Planning and Zoning Department of all such permits.
- c. All applicable federal, state, and local permits shall be maintained in good standing by Owner or Operator. Owner or Operator shall provide copies of such permits to Dinwiddie County Planning and Zoning Department during operations. Failure to maintain all applicable permits shall be grounds for revocation of this Conditional Use Permit.

- d. Copies of violations and/or reports to or from applicable federal and state agencies shall be made available to Dinwiddie County upon request of the County.
17. Project Liaison. The Applicant will designate at least one public liaison (the “Liaison”), will publicize a toll-free phone number and email address for communication with the Liaison during construction, and will post such information on a temporary sign at each major access point to the Solar Facilities. The Applicant shall, at a minimum, publish this information on the Operator’s website and provide the Zoning Administrator with the same information for publication on the County’s website and other social media. The Liaison shall act as a point of contact between citizens and construction crews. The Liaison shall be available in person and by phone during active construction hours and shall respond to any questions related to the Solar Facilities or the Project within 72 hours. The Liaison role shall commence at the initial preconstruction meeting. The Liaison shall prepare a monthly report detailing any complaints, complaint date, resolution, and resolution date of any inquiries. The Liaison shall provide a copy of the report to the Zoning Administrator on the first business day of each month throughout the construction period and for an additional six (6) months following the Commercial Operation Date.
18. Compliance with laws. All operations pursuant to this conditional use permit shall be conducted in compliance with all applicable federal, state and local laws and regulations. In the event of a conflict, the CUP Conditions control.
19. Annual review. This CUP shall be reviewed a minimum of once per calendar year to evaluate compliance with conditions contained herein.
20. Violations and Revocation. At all times, all activities conducted on the Project Site shall be in conformance with the CUP and all federal, state and local laws, regulations and ordinances. In the event of a conflict, the CUP Conditions control. A violation of any type continuing for 60 days from the date a written notice of violation (“NOV”) is mailed to the Applicant’s point of contact, as designated in writing to the Zoning Administrator, may result in revocation of this CUP if the Operator has failed to meet with the Zoning Administrator and submit a plan to address the violations cited in the NOV. With respect to any road repairs necessitated by the Operator’s use of the roads during construction, any such repairs shall be made within a reasonable period of time after obtaining approval from VDOT. Failure to comply with any and all conditions as approved by the Board of Supervisors may result in this CUP being revoked after a public hearing by the Board.
21. Successors and Assigns. The CUP and the Conditions shall apply to the Applicant and any successors or assigns of the Applicant.

**Planning Staff Recommendation:**

Planning staff has reviewed the information provided by the applicant as summarized in the Staff Report including the applicant’s intent to address construction related considerations involving providing a construction traffic plan, construction mitigation plan, site grading plan, erosion & sediment control plan, stormwater management, project screening and vegetation plan, and to also address glare, vegetative buffers, panel height, operational concerns, decommissioning, and

site access prior to receiving a building permit. However, with the scale of the proposed solar generating facility which includes an electric substation and the extent of impacts which include visual impacts, impacts on the natural resources and cultural resources, and other pre-construction, construction, operational, decommissioning, and fiscal impact concerns, staff recommends further study of the impacts of the proposed solar generating facility to see if conditional use permit (CUP) conditions can be developed to mitigate the overall impacts of the proposed solar energy generating facility.

### **PLANNING COMMISSION RECOMMENDATION**

Since this is a zoning matter, the standard statement regarding the Planning Commission's recommendation on this zoning matter must be read. In order to assist, staff prepared the following statement:

**BE IT RESOLVED, that in order to assure compliance with Virginia Code Section 15.2-2286(A) (7) it is stated that the public purpose for which this Resolution is initiated is to fulfill the requirements of public necessity, convenience, general welfare and good zoning practice, I move that the Borrego Solar Systems, Inc., request to receive a conditional use permit to operate an 2.5-megawatt alternating current solar photovoltaic (PV) ground mounted electric generation project, as described in conditional use permit request, C-21-3, be recommended for (approval with conditions or disapproval) to the Board of Supervisors.**